

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

GAMETEK LLC,	)	Civil No. 12cv0499 BEN(RBB)
	)	
Plaintiff,	)	<b>AMENDED</b> CASE MANAGEMENT
	)	CONFERENCE ORDER REGULATING
v.	)	DISCOVERY AND OTHER PRETRIAL
	)	PROCEEDINGS [AMENDING ¶ 9(b)
GAMEVIEW STUDIOS, LLC,	)	(Rule 16, Fed.R.Civ.P.) (Local
	)	Rule 1)
Defendants.	)	
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GAMEVIEW STUDIOS, LLC,	)	
	)	
Counter-claimant,	)	
	)	
v.	)	
	)	
GAMETEK LLC,	)	
	)	
Counter-defendant.	)	
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Pursuant to Rule 16 of the Federal Rules of Civil Procedure,  
and after previously consulting with the attorneys of record for  
the parties and being advised of the status of the case, and good  
cause appearing, IT IS HEREBY ORDERED:

1           1.     **Motions to Amend.** Any motion to join other parties, to  
2 amend the pleadings, or to file additional pleadings shall be filed  
3 on or before December 10, 2012.

4           2.     **Disclosure of Asserted Claims and Preliminary**  
5 **Infringement Contentions.** On or before July 26, 2012, Plaintiff  
6 shall serve on all parties a "Disclosure of Asserted Claims and  
7 Preliminary Infringement Contentions." Separately for each  
8 opposing party, the "Disclosure of Asserted Claims and Preliminary  
9 Infringement Contentions" must contain the following information:

10           a.     Each claim of each patent in the suit that is  
11 allegedly infringed by each opposing party;

12           b.     Separately for each asserted claim, each accused  
13 apparatus, product, device, process, method, act, or other  
14 instrumentality ("Accused Instrumentality") of each opposing party  
15 of which the party is aware. This identification must be as  
16 specific as possible. Each product, device and apparatus must be  
17 identified by name or model number, if known. Each method or  
18 process must be identified by name, if known, or by any product,  
19 device, or apparatus which, when used, allegedly results in the  
20 practice of the claimed method or process;

21           c.     A chart identifying specifically where each element  
22 of each asserted claim is found within each Accused  
23 Instrumentality, including for each element that the party contends  
24 is governed by 35 U.S.C. § 112(6), the identity of the  
25 structure(s), act(s), or material(s) in the Accused Instrumentality  
26 that performs the claimed function;

1           d.   Whether each element of each asserted claim is  
2 claimed to be literally present or present under the doctrine of  
3 equivalents in the Accused Instrumentality;

4           e.   For any patent that claims priority to an earlier  
5 application, the priority date to which each asserted claim  
6 allegedly is entitled; and

7           f.   If a party claiming patent infringement asserts that  
8 its own apparatus, product, device, process, method, act, or other  
9 instrumentality practices the claimed invention, the party must  
10 identify, separately for each asserted claim, each apparatus,  
11 product, device, process, method, act, or other instrumentality  
12 that incorporates or reflects that particular claim.

13         3.   **Document Production Accompanying Disclosure.** With the  
14 "Disclosure of Asserted Claims and Preliminary Infringement  
15 Contentions," the party claiming patent infringement must produce  
16 to each opposing party, or make available for inspection and  
17 copying, the following documents in the possession, custody and/or  
18 control of that party:

19           a.   Documents (e.g., contracts, purchase orders,  
20 invoices, advertisements, marketing materials, offer letters, beta  
21 site testing agreements, and third party or joint development  
22 agreements) sufficient to evidence each discussion with, disclosure  
23 to, or other manner of providing to a third party, or sale of or  
24 offer to sell, the claimed invention prior to the date of  
25 application for the patent in suit. A party's production of a  
26 document as required herein does not constitute an admission that  
27 the document evidences or is prior art under 35 U.S.C. §102;  
28

1           b. All documents evidencing the conception, reduction  
2 to practice, design, and development of each claimed invention,  
3 which were created on or before the date of application for the  
4 patent in suit or the priority date identified pursuant to P.L.R.  
5 3.1(e), whichever is earlier; and

6           c. A copy of the file history for each patent in suit.  
7       The producing party must separately identify by production  
8 number which documents correspond to each category.

9       The party claiming patent infringement is required to use its  
10 best efforts to obtain the documents to make a timely disclosure if  
11 the documents identified above are not in the possession, custody  
12 and/or control of that party.

13       **4. Preliminary Invalidity Contentions.** On or before  
14 September 10, 2012, Defendant(s) shall serve on all parties  
15 "Preliminary Invalidity Contentions," which must contain the  
16 following information:

17           a. The identity of each item of prior art that  
18 allegedly anticipates each asserted claim or renders it obvious.  
19 Each prior art patent must be identified by its number, country of  
20 origin, and date of issue. Each prior art publication must be  
21 identified by its title, date of publication, and where feasible,  
22 author and publisher. Prior art under 35 U.S.C. § 102(b) must be  
23 identified by specifying the item offered for sale or publicly used  
24 or known, the date the offer or use took place or the information  
25 became known, and the identity of the person or entity which made  
26 the use or which made and received the offer, or the person or  
27 entity which made the information known or to whom it was made  
28 known. Prior art under 35 U.S.C. § 102(f) must be identified by

1 providing the name of the person(s) from whom and the circumstances  
2 under which the invention or any part of it was derived. Prior art  
3 under 35 U.S.C. § 102(g) must be identified by providing the  
4 identities of the person(s) or entities involved in and the  
5 circumstances surrounding making the invention before the patent  
6 applicant(s);

7           b. Whether each item of prior art anticipates each  
8 asserted claim or renders it obvious. If a combination of items of  
9 prior art makes a claim obvious, each combination and the  
10 motivation to combine the items, must be identified;

11           c. A chart identifying where specifically in each  
12 alleged item of prior art each element of each asserted claim is  
13 found, including for each element that the party contends is  
14 governed by 35 U.S.C. § 112(6), the identity of the structure(s),  
15 act(s), or material(s) in each item of prior art that performs the  
16 claimed function; and

17           d. Any grounds of invalidity based on indefiniteness  
18 under 35 U.S.C. § 112(1) of any of the asserted claims.

19           **5. Document Production Accompanying Preliminary Invalidity**  
20 **Contentions.** With the "Preliminary Invalidity Contentions," the  
21 party opposing a claim of patent infringement must produce or make  
22 available for inspection and copying:

23           a. Source code, specifications, schematics, flow  
24 charts, artwork, formulas, or other documentation sufficient to  
25 show the operation of any aspects or elements of any Accused  
26 Instrumentality identified by the patent claimant in the  
27 "Disclosure of Asserted Claims and Preliminary Infringement  
28 Contentions;"

1           b. A copy of each item of prior art identified in the  
2 Preliminary Invalidity Contentions, which does not appear in the  
3 file history of the patent(s) at issue. To the extent any item is  
4 not in English, an English translation of the portion(s) relied  
5 upon must be produced.

6           **6. Exchange of Proposed Claim Constructions and Extrinsic**  
7 **Evidence.**

8           a. On or before October 1, 2012, the parties shall  
9 simultaneously exchange a preliminary proposed construction of each  
10 claim term, phrase, or clause which the parties have identified for  
11 claim construction purposes. Each "Preliminary Claim Construction"  
12 will also, for each element which any party contends is governed by  
13 35 U.S.C. § 112(6), identify the structure(s), act(s), or  
14 material(s) corresponding to that element.

15           b. At the same time the parties exchange their  
16 respective "Preliminary Claim Constructions," they must also  
17 provide a preliminary identification of extrinsic evidence,  
18 including without limitation, dictionary definitions, citations to  
19 learned treatises and prior art, and testimony of percipient and  
20 expert witnesses they contend support their respective claim  
21 constructions. The parties must identify each item of extrinsic  
22 evidence by production number or produce a copy of any item not  
23 previously produced. With respect to any witness, percipient or  
24 expert, the parties must also provide a brief description of the  
25 substance of that witness' proposed testimony.

26           c. On or before October 22, 2012, the parties shall  
27 simultaneously exchange "Responsive Claim Constructions"  
28 identifying whether the responding party agrees with the other

1 party's proposed construction, or identify an alternate  
2 construction in the responding party's preliminary construction, or  
3 set forth the responding party's alternate construction.

4 d. At the same time the parties exchange their  
5 respective "Responsive Claim Constructions," they must also provide  
6 a preliminary identification of extrinsic evidence, including  
7 without limitation, dictionary definitions, citations to learned  
8 treatises and prior art, and testimony of percipient and expert  
9 witnesses they contend support any responsive claim constructions.  
10 The parties must identify each item of extrinsic evidence by  
11 production number or produce a copy of any item not previously  
12 produced. With respect to any witness, percipient or expert, the  
13 parties must also provide a brief description of the substance of  
14 that witness' proposed testimony.

15 e. The parties must thereafter meet and confer for the  
16 purposes of narrowing the issues and finalizing preparation of a  
17 Joint Claim Construction Chart, Joint Claim Construction Worksheet  
18 and Joint Hearing Statement.

19 **7. Joint Claim Construction Chart, Worksheet and Hearing**  
20 **Statement.** On or before November 5, 2012, the parties shall  
21 complete and file a Joint Claim Construction Chart, Joint Claim  
22 Construction Worksheet and Joint Hearing Statement.

23 a. The Joint Claim Construction Chart must have a  
24 column listing complete language of disputed claims with the  
25 disputed terms in bold type and separate columns for each party's  
26 proposed construction of each disputed term. Each party's proposed  
27 construction of each disputed claim term, phrase, or clause, must  
28 identify all references from the specification or prosecution

1 history that support that construction and an identification of any  
2 extrinsic evidence known to the party on which it intends to rely  
3 either to support its proposed construction of the claim or to  
4 oppose any other party's proposed construction of the claim,  
5 including, but not limited to, as permitted by law, dictionary  
6 definitions, citations to learned treatises and prior art, and  
7 testimony of percipient and expert witnesses.

8           b. The parties Joint Claim Construction Worksheet must  
9 be in the format set forth in Appendix A and include any proposed  
10 constructions to which the parties agree, as well as those in  
11 dispute. The parties must jointly submit the Joint Claim  
12 Construction Worksheet on computer disk in both Word and  
13 Wordperfect format or in any other format the Court may direct.

14           c. The Joint Hearing Statement must include:

15                   1. The anticipated length of time necessary for  
16 the Claim Construction Hearing; and

17                   2. Whether any party proposes to call one or more  
18 witnesses, including experts, at the Claim Construction Hearing,  
19 the identity of each witness, and for each expert, a summary of  
20 each opinion to be offered in sufficient detail to permit a  
21 meaningful deposition of that expert.

22           d. At the Court's discretion, within 5 calendar days of  
23 the submission of the Joint Claim Construction Chart, Joint Claim  
24 Construction Worksheet and Joint Hearing Statement, the Court will  
25 schedule and hold a status conference with the parties, in person  
26 or by telephone, to discuss the schedule, witnesses and any other  
27 matters regarding the Claim Construction Hearing.

28



1           8.     **Completion of Claim Construction Discovery.** The parties  
2 shall complete all discovery, including any depositions of any  
3 witnesses, including experts, the parties intend to use in the  
4 Claim Construction Hearing by December 31, 2012. An expert witness  
5 identified in a party's Joint Hearing Statement may be deposed on  
6 claim construction issues. The identification of an expert in the  
7 Joint Hearing Statement may be deemed good cause for a separate  
8 deposition on all substantive issues.

9           9.     **Claim Construction Briefs.**

10           a.    On or before January 14, 2013, the parties shall  
11 simultaneously file and serve opening briefs and any evidence  
12 supporting their claim construction.

13           b.    On or before January 28, 2013, the parties shall  
14 simultaneously file and serve briefs responsive to the opposing  
15 party's opening brief and any evidence directly rebutting the  
16 supporting evidence contained in the opposing party's opening  
17 brief.

18           10.   **Claim Construction Hearing.** On February 21, 2013, at  
19 9:00 a.m., subject to the convenience of the Court's calendar, the  
20 Honorable Roger T. Benitez will conduct a Claim Construction  
21 Hearing, to the extent the Court believe a hearing is necessary for  
22 construction of the claims at issue.

23           11.   **Final Contentions.** Each party's "Preliminary  
24 Infringement Contentions" and "Preliminary Invalidity Contentions"  
25 will be deemed to be that party's final contentions, except as set  
26 forth below.

27           a.    If a party claiming patent infringement believes in  
28 good faith that the Court's Claim Construction Ruling so requires,

1 not later than 30 days after service by the Court of its Claim  
2 Construction Ruling, that party may serve "Final Infringement  
3 Contentions" without leave of Court that amend its "Preliminary  
4 Infringement Contentions."

5           b. Not later than 50 days after service by the Court of  
6 its Claim Construction Ruling, each party opposing a claim of  
7 patent infringement may serve "Final Invalidity Contentions"  
8 without leave of Court that amend its "Preliminary Invalidity  
9 Contentions" if: i) a party claiming patent infringement has  
10 served "Final Infringement Contentions," or ii) the party opposing  
11 a claim of patent infringement believes in good faith that the  
12 Court's Claim Construction Ruling so requires.

13       **12. Amendment to Contentions.** Amendment or modification of  
14 the Preliminary or Final Infringement Contentions or the  
15 Preliminary or Final Invalidity Contentions, other than as  
16 expressly permitted in the section above, may be made only by order  
17 of the Court, which will be entered only upon a showing of good  
18 cause.

19       **13. Expert Witnesses.** On or before April 22, 2013, all  
20 parties shall exchange a list of all expert witnesses expected to  
21 be called at trial. The list shall include the name, address, and  
22 phone number of the expert and a brief statement identifying the  
23 subject areas as to which the expert is expected to testify. The  
24 list shall also include the normal rates the expert charges for  
25 deposition and trial testimony. On or before May 13, 2013, any  
26 party may supplement its designation in response to any other  
27 party's designation so long as that party has not previously  
28 retained an expert to testify on that subject.

1        14. Each expert witness designated by a party shall prepare a  
2 written report to be provided to all other parties no later than  
3 June 10, 2013, containing the information required by Fed. R. Civ.  
4 P. 26(a)(2)(A) and (B). A written report is not required from a  
5 witness giving testimony as a percipient expert.

6        **Except as provided in paragraph 15, below, any party that**  
7 **fails to make these disclosures shall not, absent substantial**  
8 **justification, be permitted to use evidence or testimony not**  
9 **disclosed at any hearing or at the time of trial. In addition, the**  
10 **Court may impose sanctions as permitted by Fed. R. Civ. P. 37(c).**

11        15. Any party, through any expert designated, shall in  
12 accordance with Fed. R. Civ. P. 26(a)(2)(C) and Fed. R. Civ. P.  
13 26(e), supplement any of its expert reports regarding evidence  
14 intended solely to contradict or rebut evidence on the same subject  
15 matter identified in an expert report submitted by another party.  
16 Supplemental reports are due on or before July 1, 2013.

17        16. All fact discovery shall be completed on or before June  
18 24, 2013. All expert discovery shall be completed on or before  
19 August 26, 2013.

20        "Completed" means that all discovery under Rules 30-36 of the  
21 Federal Rules of Civil Procedure must be initiated a sufficient  
22 period of time in advance of the cut-off date, so that it may be  
23 completed by the cut-off date, taking into account the times for  
24 service, notice, response, and any corresponding discovery motions,  
25 as set forth in the Federal Rules of Civil Procedure. All disputes  
26 concerning discovery shall be brought to the attention of the  
27 Magistrate Judge no later than thirty (30) days following the date  
28 upon which the event giving rise to the discovery dispute occurred.

1 Counsel shall meet and confer pursuant to the requirements of Fed.  
2 R. Civ. P. 26 and Local Rule 26.1(a).

3 17. All motions, other than motions to amend or join parties,  
4 or motions in limine, shall be filed on or before September 23,  
5 2013.

6 Motions will not be heard or calendared unless counsel for the  
7 moving party has obtained a motion hearing date from the law clerk  
8 of the judge who will hear the motion. **Be advised that the parties**  
9 **must file their moving papers within three (3) days of receiving**  
10 **the motion hearing date from the Court. Be further advised that**  
11 **the period of time between the date you request a motion date and**  
12 **the hearing date may be up to six weeks. Please plan accordingly.**  
13 For example, you may need to contact the judge's law clerk at least  
14 six weeks in advance of the motion cut-off to calendar the motion.  
15 Failure of counsel to timely request a motion date may result in  
16 the motion not being heard. **Motions will not be heard on the above**  
17 **date unless you have obtained that date in advance from the judge's**  
18 **law clerk.**

19 Briefs or memoranda in support of or in opposition to any  
20 pending motion shall not exceed twenty-five (25) pages in length  
21 without permission of the judge or magistrate judge who will hear  
22 the motion. No reply memorandum shall exceed ten (10) pages  
23 without leave of the judge or magistrate judge who will hear the  
24 motion.

25 18. Further settlement conferences shall be held at  
26 appropriate intervals during the course of the litigation in the  
27 chambers of Judge Ruben B. Brooks. A mandatory settlement  
28

1 conference date will be set at one of the scheduled settlement  
2 conferences.

3 All parties, claims adjusters for insured Defendants and non-  
4 lawyer representatives with complete authority to enter into a  
5 binding settlement, as well as the principal attorneys responsible  
6 for the litigation, must be present and legally and factually  
7 prepared to discuss and resolve the case at the mandatory  
8 settlement conference and at all settlement conferences. Retained  
9 outside corporate counsel shall not appear on behalf of a  
10 corporation as the party representative who has the authority to  
11 negotiate and enter into a settlement. Failure to attend or obtain  
12 proper excuse will be considered grounds for sanctions.

13 **Confidential written settlement statements for the mandatory**  
14 **settlement conference shall be lodged directly in the chambers of**  
15 **Judge Brooks no later than five court days before the mandatory**  
16 **settlement conference.** The statements need not be filed with the  
17 Clerk of the Court or served on opposing counsel. The statements  
18 will not become part of the court file and will be returned at the  
19 end of the conference upon request. Written statements may be  
20 lodged with Judge Brooks either by mail or in person.

21 Any statement submitted should avoid arguing the case.  
22 Instead, the statement should include a neutral factual statement  
23 of the case, identify controlling legal issues, and concisely set  
24 out issues of liability and damages, including any settlement  
25 demands and offers to date and address special and general damages  
26 where applicable.

27 If appropriate, the Court will consider the use of other  
28 alternative dispute resolution techniques.

1        19. Counsel shall serve on each other and file with the  
2 Clerk of the Court their memoranda of contentions of fact and law  
3 in compliance with Local Rule 16.1(f)(2) on or before December 23,  
4 2013. On or before this date, all parties or their counsel shall  
5 also fully comply with the pretrial disclosure requirements of rule  
6 26(a)(3) of the Federal Rules of Civil Procedure.

7        20. Counsel shall confer and take the action required by  
8 Local Rule 16.1(f)(4) on or before December 30, 2013. A personal  
9 meeting between an incarcerated Plaintiff, acting in pro per, and  
10 defense counsel is not required.

11        At this meeting, counsel shall discuss and attempt to enter  
12 into stipulations and agreements resulting in simplification of the  
13 triable issues. Counsel shall exchange copies and/or display all  
14 exhibits other than those to be used for impeachment, lists of  
15 witnesses and their addresses including experts who will be called  
16 to testify and written contentions of applicable facts and law.  
17 The exhibits shall be prepared in accordance with Local Rule  
18 16.1(f)(2)(c). Counsel shall cooperate in the preparation of the  
19 proposed final pretrial conference order.

20        21. The proposed final pretrial conference order, including  
21 objections to any party's Fed. R. Civ. P. 26(a)(3) pretrial  
22 disclosures, shall be prepared, served and lodged with the Clerk of  
23 the Court on or before January 13, 2014, and shall be in the form  
24 prescribed in and in compliance with Local Rule 16.1(f)(6).  
25 Counsel shall also bring a court copy of the pretrial order to the  
26 pretrial conference.

27        22. The final pretrial conference shall be held before the  
28 Honorable Roger T. Benitez on January 21, 2014, at 10:30 a.m.

1        23.    The dates and times set forth herein will not be  
2 modified except for good cause shown.

3        24.    Plaintiff's(s') counsel shall serve a copy of this order  
4 on all parties that enter this case hereafter.

5        IT IS SO ORDERED.

6  
7 DATED:    July 18, 2012

  
Ruben B. Brooks, Magistrate Judge  
United States District Court

8  
9 cc:  
10 Judge Benitez  
11 All Parties of Record  
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